

TO: Alex Goodenough, Office of Information and Regulatory Affairs

FROM: Ryan Law, Deputy Assistant Secretary
Office of Privacy, Transparency, and Records

SUBJECT: Justification for Emergency Processing: Baseline Report

Pursuant to the Office of Management and Budget (OMB) procedures established at 5 C.F.R. §1320.13, the Department of the Treasury (Treasury) requests emergency processing of a new Information Collection Request for the Emergency Capital Investment Program (“ECIP” or the “Program”) Initial Supplemental Report (ISR).

The Consolidated Appropriations Act, 2021, signed into law on December 27, 2020, added Section 104A of the Community Development Banking and Financial Institutions Act of 1994 (the “Act”). Section 104A authorizes the Secretary of the Treasury to establish the Program to support the efforts of low- and moderate-income community financial institutions to, among other things, provide loans, grants, and forbearance for small businesses, minority-owned businesses, and consumers, especially in low-income and underserved communities, including persistent poverty counties, that may be disproportionately impacted by the economic effects of the COVID-19 pandemic by providing direct and indirect capital investments in low-and moderate-income community financial institutions.

As required by the Act, the interest and dividend rates payable on ECIP instruments are determined based on the increase in the amount of lending by an institution within minority, rural, and urban low-income and underserved communities and to low- and moderate-income borrowers during the preceding annual period compared to a baseline set from the annual period ending on September 30, 2020. To establish this baseline level of qualified lending, Treasury will be collecting information from participants through the ISR. Participants will be required to submit the ISR 10 business days prior to closing their investments and receiving funds.

Applications and other forms for the ECIP program were previously approved under OMB Control Number 1505-0267. Following the review of the applications, Treasury made awards and is now ready to begin scheduling closings. Due to the need to begin closing these investments as soon as possible, Treasury requests emergency processing and approval by Wednesday, March 30, 2022 for the ISR.

Treasury has scheduled the first closings on Tuesday, April 26, 2022. As noted, since participants will be required to submit the ISR 10 business days prior to closing, the institutions scheduled to close on April 26, 2022 will be required to submit their ISR by Tuesday, April 12, 2022. Participants need time to evaluate the data collection required under the final ISR, collect this data from their systems and then complete and submit the report. The draft ISR and instructions were published to Treasury’s website on February 15, 2022. Under 44 USC § 3506(c)(2)(A), the routine PRA process requires a 60-day public comment period. The 60-day comment period would elapse on April 16, 2022, which is past the date on which the ECIP recipients scheduled to close on April 26, 2022 would be required to submit the ISR. Treasury

would then need to review the comments, incorporate the revisions, finalize the report and then seek OMB approval, which would add many additional weeks to the schedule at minimum, further delaying Treasury's ability to invest this capital in the approved institutions. As a COVID-19 response program, it is essential that Treasury complete investments as soon as possible to allow approved institutions to deploy the capital in communities disproportionately affected by the COVID-19 pandemic as statutorily intended. Public harm will result from any delay in making the ECIP capital available to qualified institutions and the communities that they serve because these institutions will otherwise have less capital available to invest, further prolonging the economic recovery from the COVID-19 pandemic in communities that have been disproportionately affected. In addition, the period covered by this ISR is the annual period ending on September 30, 2020, as directed by the Act. The use of normal PRA clearance procedures would increase the length of time between the period being reported on and when the information is collected, increasing the risk that institutions will report stale, missing, or inaccurate data and disrupting the purposes of the information collection.

Treasury requests a waiver from the requirement to publish a notice in the Federal Register seeking public comments and routine clearance under the Paperwork Reduction Act. Although Treasury seeks this waiver, the agency posted draft versions of the forms and instructions for a two-week period ending Monday, February 28, 2022. Treasury has reviewed these comments and considered modifications to the proposed forms and instructions. Many comments involve requests for clarification of ISR instructions or other technical assistance related to the ISR or legal agreements. In some cases, Treasury will provide clarifications within the instructions document but it will also incorporate other strategies such as issuing FAQs or one-on-one technical assistance. Treasury received no comments that included specific estimates of time or expense to complete the forms.